

# **2013 DRAFTING REQUEST**

## **Bill**

Received: **8/5/2013** Received By: **pkahler**  
 Wanted: **As time permits** Same as LRB:  
 For: **Peter Barca (608) 266-5504** By/Representing: **Matt Egerer**  
 May Contact: Drafter: **pkahler**  
 Subject: **Real Estate - condominiums** Addl. Drafters:  
 Extra Copies:

Submit via email: **YES**  
 Requester's email: **Rep.Barca@legis.wisconsin.gov**  
 Carbon copy (CC) to: **Fern.Knepp@legis.wisconsin.gov**

---

## **Pre Topic:**

No specific pre topic given

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## **Topic:**

Blocking a vote on an amendment

---

## **Instructions:**

See attached

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## **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 8/8/2013	csicilia 9/3/2013	jmurphy 9/3/2013	_____			
/P1	pkahler 9/12/2013			_____	srose 9/3/2013		
/P2	pkahler 9/16/2013	csicilia 9/16/2013	jmurphy 9/16/2013	_____	lparisi 9/16/2013		
/1	pkahler	csicilia	jfrantze	_____	sbasford		

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	10/24/2013	9/17/2013	9/17/2013	_____	9/17/2013		
/2	pkahler 2/24/2014	csicilia 10/25/2013	rschluet 10/25/2013	_____	sbasford 10/25/2013		
/3		csicilia 2/27/2014	jmurphy 2/27/2014	_____	lparisi 2/27/2014	srose 3/27/2014	

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<END>

  
NOT  
NEEDED

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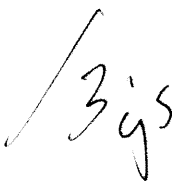
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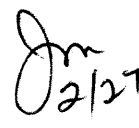
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$$\frac{2/27}{1/4}$$
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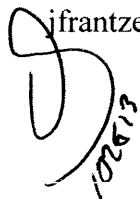
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2 gs 10/25  
13 <END>



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13

Jb 9/17

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Handwritten notes: P2 cjs 9/16/13, dm 9/16, Jmt JB 9/14

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/? pkahler

*Pligs 9/13*  
*13*  
*Jim 9/13*  
*self*

FE Sent For:

<END>

## Kahler, Pam

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**From:** Egerer, Matt  
**Sent:** Thursday, August 01, 2013 12:20 PM  
**To:** Kahler, Pam  
**Subject:** Condominium Draft

Pam,

This request is for you or whoever would be most appropriate.

Our office was contacted by a constituent that lives in a condominium which initially failed to sell the bulk of the units and went into receivership. A new developer later took over, but because the new developer owns the majority of units, it can outvote the rest of the association by voting its shares. As a result, agreements on the use of common spaces (common area taken over as a management office) and timely maintenance services (shoveling/lawn mowing responsibilities have not been kept up in a timely way) have been changed in ways that undermine our constituent's initial agreement. Now the new developer is renting the remaining units as apartments.

We would like to request a bill draft that would prevent a situation such as this.

I see that under 703.10(5), the law regarding amending bylaws says:

*"(5) AMENDMENT. The bylaws may be amended by the affirmative vote of unit owners having 67% or more of the votes. Each particular set forth in sub. (2) shall be expressed in the bylaws as amended."*

Also under 703.90(2) the Declaration can be amended by:

*"Except as provided in sub. (4) and ss. 703.093, 703.13 (6)(c) and (d) and (8) (b), and 703.26, a condominium declaration **may be amended with the written consent of at least two-thirds of the aggregate of the votes established under sub. (1) (f) or a greater percentage if provided in the declaration.** An amendment becomes effective when it is recorded in the same manner as the declaration. The document submitting the amendment for recording shall state that the required consents and approvals for the amendment were received. A unit owner's written consent is not effective unless it is approved in writing by the first mortgagee of the unit, or the holder of an equivalent security interest, if any.*

*Approval from the first mortgage lender or equivalent security interest holder, or the person servicing the first mortgage loan or its equivalent on a unit, constitutes approval of the first mortgagee or equivalent security interest holder under this subsection."*

So current law says just over 33% of unit owners can vote block a change to the declaration or bylaws. We would like to add provisions in these two areas so that:

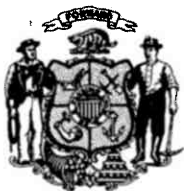
When any ownership interest in units controlling 70% or more of the votes in the association is held by a single person or by multiple persons operating jointly by formal agreement, the amendment may be disapproved by 50% of the total number of all owners in the condominium, without regard to the number of units owned. *or votes or interest*

Also, this bill idea is based on a bill draft from Pennsylvania. That bill has to do with termination of a condominium agreement. When I was looking into this initially I did not see statutes involving the termination

→ votes vs ownership interest 1

under our state law (but may have missed it). If this wouldn't already be covered by the draft's provisions on bylaws and the declaration, we would also like the above provision to apply to terminations as well.

Matt Egerer  
Office of Representative Peter Barca  
Assembly Democratic Leader  
608.266.5504



gjs  
r m not run

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

(w 8-8)  
D-100  
SA  
Draft  
9/3/13  
Jm  
ger cut

1 AN ACT; relating to: the percentage of votes needed to amend condominium  
2 documents.

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***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

3 SECTION 1. 703.09 (2) of the statutes is renumbered 703.09 (2) (a) and amended  
4 to read:  
5 703.09 (2) (a) Except as provided in sub. (4) and ss. 703.093, 703.13 (6) (c) and  
6 (d) and (8) (b), and 703.26, a condominium declaration may be amended with the  
7 written consent of at least two-thirds of the aggregate of the votes established under  
8 sub. (1) (f) or a greater percentage if provided in the declaration. An amendment  
9 becomes effective when it is recorded in the same manner as the declaration. The

1 document submitting the amendment for recording shall state that the required  
2 consents and approvals for the amendment were received. A unit owner's written  
3 consent is not effective unless it is approved in writing by the first mortgagee of the  
4 unit, or the holder of an equivalent security interest, if any. Approval from the first  
5 mortgage lender or equivalent security interest holder, or the person servicing the  
6 first mortgage loan or its equivalent on a unit, constitutes approval of the first  
7 mortgagee or equivalent security interest holder under this subsection paragraph.

History: 1977 c. 407; 1985 a. 188, 332; 2003 a. 283.

8 **SECTION 2.** 703.09 (2) (b) of the statutes is created to read:

9 703.09 (2) (b) Notwithstanding par. (a), if legal title to units with 70 percent  
10 or more of the aggregate of the votes established under sub. (1) (f) is held by a single  
11 person or by 2 or more persons acting jointly by formal agreement, 50 percent of the  
12 total number of all owners of record in the condominium, without regard to the  
13 number of units owned or the number of votes appurtenant to the units owned, may  
14 disapprove a proposed amendment to the declaration.

\*\*\*\*NOTE: Is this what you intended? What do you mean by "all owners"? For example, if a single unit is owned by a husband and wife, is that two owners, as I believe I have drafted? If, however, the language were "50 percent of the total number of all unit owners," according to the definition of "unit owner" a husband and wife would be one unit owner. Is that what you want, instead?

\*\*\*\*NOTE: How would an amendment be disapproved? What procedure would be used? After a vote is taken, if a person objects to the outcome, would another vote have to be taken, or would the objecting person(s) simply point out that the votes against the amendment equal 50 percent (or more) of all owners (if the exact number of votes either way is actually made known)? Also, if votes are counted by unit, all owners of record may not have voted. Alternatively, you could turn the language around and provide that, if one person (or 2 or more acting jointly) controls 70 percent of the aggregate votes appurtenant to the units, at least 51 percent of all owners must consent to an amendment for it to pass.

15 **SECTION 3.** 703.093 (1) of the statutes is renumbered 703.093 (1) (a) and  
16 amended to read:



1           703.093 (1) (a) As an alternative to s. 703.09 (2) (a), a condominium declaration  
2       may be amended under this section if at least two-thirds of the aggregate of the votes  
3       established under s. 703.09 (1) (f), or a greater percentage if provided in the  
4       declaration, consent to the amendment in writing and those consents are approved  
5       by the mortgagees or holders of equivalent security interests in the units. An  
6       amendment becomes effective when it is recorded in the same manner as the  
7       declaration.

History: 2003 a. 283.

8           **SECTION 4.** 703.093 (1) (b) of the statutes is created to read:

9           703.093 (1) (b) Notwithstanding par. (a), if legal title to units with 70 percent  
10       or more of the aggregate of the votes established under s. 703.09 (1) (f) is held by a  
11       single person or by 2 or more persons acting jointly by formal agreement, 50 percent  
12       of the total number of all owners of record in the condominium, without regard to the  
13       number of units owned or the number of votes appurtenant to the units owned, may  
14       disapprove a proposed amendment to the declaration.

\*\*\*\*NOTE: See NOTES after s. 703.09 (2) (b) above.

\*\*\*\*NOTE: Under the procedure for obtaining votes under this section, a ballot is sent to, and must be signed by, each unit owner, so the procedure under this section may need to be amended in order to get the votes of "all owners of record."

15           **SECTION 5.** 703.10 (5) of the statutes is renumbered 703.10 (5) (a). ✕

16           **SECTION 6.** 703.10 (5) (b) of the statutes is created to read:

17           703.10 (5) (b) Notwithstanding par. (a), if legal title to units with 70 percent  
18       or more of the aggregate of the votes established under s. 703.09 (1) (f) is held by a  
19       single person or by 2 or more persons acting jointly by formal agreement, 50 percent  
20       of the total number of all owners of record in the condominium, without regard to the  
21       number of units owned or the number of votes appurtenant to the units owned, may  
22       disapprove a proposed amendment to the bylaws.

\*\*\*\*NOTE: See NOTES after s. 703.09 (2) (b) above.

1           **SECTION 7.** 703.11 (5) of the statutes is amended to read:

2           703.11 (5) AMENDMENT. Except as provided in s. 703.265, amendment of a  
3           condominium plat by an addendum that is not included as part of an amendment to  
4           the declaration shall be accomplished in the same manner as an amendment to the  
5           declaration under s. 703.09 (2) (a). ✓

History: 1977 c. 407; 1983 a. 497; 1993 a. 463, 465, 491; 1997 a. 300, 333; 2003 a. 283; 2005 a. 9, 41.

          \*\*\*\*NOTE: If the cross-reference is limited to s. 703.09 (2) (a), the disapproval of an  
          amendment under this section by 50 percent of the owners does not apply. Do you want  
          it to apply? ✓

6           **SECTION 8.** 703.13 (6) (c) of the statutes is amended to read:

7           703.13 (6) (c) An amendment to a declaration shall identify the units involved  
8           and shall state that the boundaries between those units are being relocated by  
9           agreement of the unit owners thereof. The amendment shall contain words of  
10          conveyance between those unit owners, and when recorded shall also be indexed in  
11          the name of the grantor and grantee. If the adjoining unit owners have specified in  
12          their written application the reallocation between their units of the aggregate  
13          undivided interest in the common elements appertaining to those units, the  
14          amendment to the declaration shall reflect that reallocation. An amendment to a  
15          declaration under this paragraph shall be adopted, at the option of the adjoining unit  
16          owners, either under s. 703.09 (2) (a) or by the written consent of the owners of the ✓  
17          adjoining units involved and the mortgagees of the adjoining units.

History: 1977 c. 407; 1985 a. 332; 1987 a. 403; 2003 a. 283.

          \*\*\*\*NOTE: If the cross-reference is limited to s. 703.09 (2) (a), the disapproval of an  
          amendment under this section by 50 percent of the owners does not apply. Do you want  
          it to apply?

18          **SECTION 9.** 703.13 (8) (b) of the statutes is amended to read:

19          703.13 (8) (b) If the unit owners of adjoining units that may be merged desire  
20          to merge the units, the unit owners, after 30 days' written notice to all other unit

1 owners, shall prepare and execute appropriate instruments under this subsection.  
2 An amendment to the condominium instruments shall assign a new identifying  
3 number to the new unit created by the merger of the units and shall allocate to the  
4 new unit all of the undivided interest in the common elements and rights to use the  
5 limited common elements and the votes in the association formerly appertaining to  
6 the separate units. The amendment shall reflect an allocation to the new unit of the  
7 liability for common expenses and rights to common surpluses formerly  
8 appertaining to the separate units. An amendment to a declaration under this  
9 paragraph shall be adopted either under s. 703.09 (2) (a) or by the written consent ✓  
10 of the owners of the units to be merged, the mortgagees of those units, if any, and the  
11 board of directors of the association.

History: 1977 c. 407; 1985 a. 332; 1987 a. 403; 2003 a. 283.

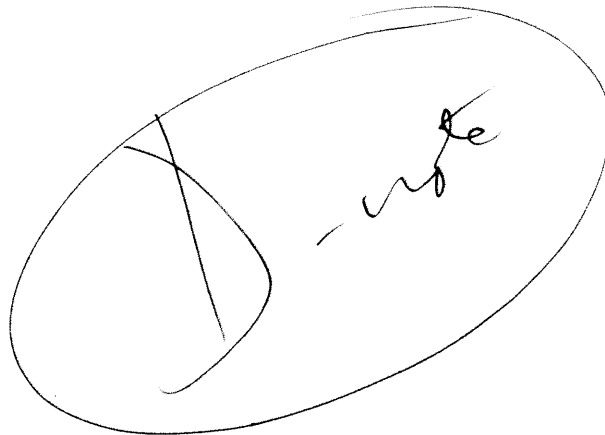
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amendment under this section by 50 percent of the owners does not apply. Do you want  
it to apply?

12 SECTION 10. 703.38 (11) of the statutes is created to read:

13 703.38 (11) Sections 703.09 (2) (b), 703.093 (1) (b), and 703.10 (5) (b) do not  
14 apply to a condominium existing on the effective date of this subsection .... [LRB  
15 inserts date], if the existing declaration or bylaws provide otherwise.

\*\*\*\*NOTE: This applicability provision is similar to s. 703.38 (2) and (3). Is this what  
you want?

16 (END)



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

PI  
LRB-2847/dn

PJK:.....

rm not from  
gis

- Late -

I have drafted this as a preliminary draft because of questions that I have. Please see the embedded NOTES in the draft.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)

**DRAFTER'S NOTE  
FROM THE  
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LRB-2847/P1dn  
PJK:cjs:jm

September 3, 2013

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Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)

## Kahler, Pam

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**From:** Egerer, Matt  
**Sent:** Tuesday, September 03, 2013 3:41 PM  
**To:** Kahler, Pam  
**Subject:** Condominium Draft 2847

Pam,

I got the draft back on 2847 and I hadn't thought through the fact there could be multiple owners of an individual unit. In my instructions I was assuming each unit would get one vote (husband and wife would count as one).

The goal here is to prevent an individual or company that owns a supermajority of units from exercising all of their unit-based votes to decide to make a bunch of changes at the condo over the objections of a small subset of other units. I use the term voting, but I believe its more about getting written consent/lack thereof. No need to develop a balloting process.

As I understand it, with 66% of units a development company could change the bylaws or declaration in a way that could limit rights and privileges of people who have bought condos under the initial declaration/by-laws with those rights and privileges built in. In effect, they would no longer be getting the deal they had agreed to.

We would like to address this situation, so that in the event a development company owns 70% or more of the units, only a simple majority of other unit owners would be needed to block a change. In an extreme example, if a condo association has 102 units, but one developer owned 100 units and individuals owned the other two, the two individual owners would be able to reject changes proposed to the declaration/bylaws by the 100 unit owner to protect their property rights. Rather than a vote of 100-2, it's more like a vote of 2-1 (despite the fact this company has a lot more actual units).

I'm less clear on how amendments and condominium plat addendums work, but we would want the 50% provision to apply if there were changes to units or common spaces that directly impact the other unit owners. For example, if the proposal is to turn a common room into a private room or bulldoze the swimming pool to add a new building – that would be a problem. But I don't believe the same level of protection would be needed if for example there was a will by a developer or the rest of the condo association to purchase a vacant property next door to build a building to be added to the association. Also, if multiple individual units want to merge into one unit, that would not need the 50% provision.

I also agree on the applicability, because I'd presume this is mainly an issue that arises with a newer association (as it did with ours).

Matt Egerer  
Office of Representative Peter Barca  
Assembly Democratic Leader  
608.266.5504

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**From:** Egerer, Matt  
**Sent:** Thursday, August 01, 2013 1:03 PM  
**To:** Kahler, Pam  
**Subject:** RE: Condominium Draft

Ok, then we would want to maintain that. Thank you.

Matt Egerer  
Office of Representative Peter Barca  
Assembly Democratic Leader

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**From:** Kahler, Pam  
**Sent:** Thursday, August 01, 2013 1:02 PM  
**To:** Egerer, Matt  
**Subject:** RE: Condominium Draft

Matt,

Section 703.28 provides for removing the property's legal status as a condominium through a removal instrument. Is that you mean by terminating the agreement? Removing the property as a condominium requires *all* of the unit owners, so it would seem that the proposed provision is not needed for that.

Pam

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**From:** Egerer, Matt  
**Sent:** Thursday, August 01, 2013 12:20 PM  
**To:** Kahler, Pam  
**Subject:** Condominium Draft

Pam,

This request is for you or whoever would be most appropriate.

Our office was contacted by a constituent that lives in a condominium which initially failed to sell the bulk of the units and went into receivership. A new developer later took over, but because the new developer owns the majority of units, it can outvote the rest of the association by voting its shares. As a result, agreements on the use of common spaces (common area taken over as a management office) and timely maintenance services (shoveling/lawn mowing responsibilities have not been kept up in a timely way) have been changed in ways that undermine our constituent's initial agreement. Now the new developer is renting the remaining units as apartments.

We would like to request a bill draft that would prevent a situation such as this.

I see that under 703.10(5), the law regarding amending bylaws says:

*"(5) AMENDMENT. The bylaws may be amended by the affirmative vote of unit owners having 67% or more of the votes. Each particular set forth in sub. (2) shall be expressed in the bylaws as amended."*

Also under 703.90(2) the Declaration can be amended by:

*"Except as provided in sub. (4) and ss. 703.093, 703.13 (6)(c) and (d) and (8) (b), and 703.26, a condominium declaration **may be amended with the written consent of at least two-thirds of the aggregate of the votes established under sub. (1) (f) or a greater percentage if provided in the declaration.** An amendment becomes effective when it is recorded in the same manner as the declaration. The document submitting the amendment for recording shall state that the required consents and approvals for the amendment were received. A unit owner's written consent is not effective unless it is approved in writing by the first mortgagee of the unit, or the holder of an equivalent security interest, if any.*

*Approval from the first mortgage lender or equivalent security interest holder, or the person servicing the first mortgage loan or its equivalent on a unit, constitutes approval of the first mortgagee or equivalent security interest holder under this subsection."*

So current law says just over 33% of unit owners can vote block a change to the declaration or bylaws. We would like to add provisions in these two areas so that:

When any ownership interest in units controlling 70% or more of the votes in the association is held by a single person or by multiple persons operating jointly by formal agreement, the amendment may be disapproved by 50% of the total number of all owners in the condominium, without regard to the number of units owned.

Also, this bill idea is based on a bill draft from Pennsylvania. That bill has to do with termination of a condominium agreement. When I was looking into this initially I did not see statutes involving the termination under our state law (but may have missed it). If this wouldn't already be covered by the draft's provisions on bylaws and the declaration, we would also like the above provision to apply to terminations as well.

Matt Egerer  
Office of Representative Peter Barca  
Assembly Democratic Leader  
608.266.5504